

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY MAYO,

Defendant-Appellee.

UNPUBLISHED

May 2, 1997

No. 189204

Recorder's Court

LC No. 95-002058

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ.

PER CURIAM.

Defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and was sentenced to six to sixty months' imprisonment. This offense involved the sexual penetration by defendant of a five-year-old male relative. The trial court departed from the guidelines' range of 60 to 120 months because it did not believe that defendant was a threat to the community based upon a psychological assessment of defendant and because the victim's mother did not want to see defendant incarcerated. The prosecution appeals as of right, challenging the length of defendant's sentence. We vacate defendant's sentence and remand for resentencing.

This Court reviews sentencing decisions for an abuse of discretion by applying the principle of proportionality to determine if the sentence imposed is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A departure from the recommended range indicates a possibility that a sentence may be disproportionate. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). When a court departs from the guidelines because of some special characteristics of the offense or the offender, it must specifically explain those characteristics. *People v Stone*, 195 Mich App 600, 608; 491 NW2d 628 (1992). Even where some departure from the guidelines is warranted, the extent of the departure by the trial court may violate the principle of proportionality. *People v Cramer*, 201 Mich App 590, 597; 507 NW2d 447 (1993).

* Circuit judge, sitting on the Court of Appeals by assignment.

Although the trial court cited appropriate reasons for a departure from the sentencing guidelines on the facts of both this offense and defendant's background, we hold that the extent of the court's departure is disproportionate. The trial court imposed a minimum sentence that was ten times less than the lowest end of the guidelines' range. Furthermore, the trial court set the maximum sentence at what was the lowest end of the guidelines for the minimum sentence. The facts of this offense and defendant's background did not support such radical departures. Compare *People v Allen*, 192 Mich App 592, 604; 481 NW2d 800 (1992) (sentence of 10 to 25 years' imprisonment proportionate for first-degree criminal sexual conduct where guidelines range was fifteen to thirty years). Accordingly, we vacate defendant's sentence and remand for resentencing.

The prosecution also argues that resentencing should be before another judge. Although the trial court expressed strong opinions about sentencing defendant to a term below the guidelines, its reasons for doing so were not inappropriate—only the length of the sentence imposed is disproportionate. This is not a case where it would be unreasonable to expect the trial court to put out of its mind previously expressed views and findings without substantial difficulty. See *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986).

Defendant's sentence is vacated and the matter is remanded for resentencing. We do not retain jurisdiction.

/s/ Myron H. Wahls
/s/ Hilda R. Gage
/s/ Wesley J. Nykamp